

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JAMES ZIMMERMAN, PHILIP CULHANE,  
DAVID HILTBRAND, WILLIAM JACKSON,  
GEORGE ZAROU, JOHN JOSEPH PAGGIOLI,  
"JOHN DOE II," "JOHN DOE III," PHILIP C.  
HENNINGSEN, PHILIP LYLE SMITH, "JOHN  
DOE V," and DAVID ZARNOCK,

Plaintiffs,

-against-

POLY PREP COUNTRY DAY SCHOOL,  
WILLIAM M. WILLIAMS, DAVID B.  
HARMAN, AND VARIOUS MEMBERS OF  
THE POLY PREP BOARD OF TRUSTEES,  
WHOSE NAMES ARE CURRENTLY  
UNKNOWN AND THUS DESIGNATED AS  
"JAMES DOE I-XXX," HARRY PETCHESKY,  
ESQ., ROBERT F. HERRMANN, ESQ., and  
MICHAEL NOVELLO,

Defendants.

No. 09 Civ. 4586 (FB) (CLP)

Electronically Filed

NOTICE OF MICHAEL  
NOVELLO'S MOTION TO  
DISMISS THE CLAIMS  
ASSERTED AGAINST HIM IN  
THE THIRD AMENDED  
COMPLAINT (WITH  
ADDENDUM)


PLEASE TAKE NOTICE that upon the annexed declaration of David G. Trachtenberg, Esq. dated June 18, 2012 and the accompanying Memorandum of Law dated June 18, 2012 in Support of Defendant Michael Novello's Motion to Dismiss the Claims Asserted Against Him in Plaintiffs' Third Amended Complaint (with Addendum), Michael Novello joins in the arguments of the Poly Prep Defendants set forth in the Memorandum of Law in Support of the Poly Prep Defendants' Motion to Dismiss Plaintiffs' Revised Second Amended Complaint dated December 22, 2011, the Reply Memorandum of Law in Further Support of the Poly Prep Defendants' Motion to Dismiss Plaintiffs' Revised Second Amended Complaint dated December 22, 2011, the Supplemental Memorandum of Law in Support of the Poly Prep Defendants' Motion to Dismiss Plaintiffs' Third Amended Complaint dated April 16, 2012 (with Addendum), and the

Supplemental Reply Memorandum of Law in Support of the Poly Prep Defendants' Motion to Dismiss Plaintiffs' Third Amended Complaint (with Addendum) dated May 21, 2012.

Accordingly, Michael Novello will move this Court, before the Honorable Frederic Block, in Courtroom 10C of this Court, located at 225 Cadman Plaza East, Brooklyn, New York, 11201, at the oral argument on the other defendants' motions to dismiss previously set by this Court to take place on June 20, 2012, for an Order dismissing all claims against Michael Novello contained in the Third Amended Complaint (with Addendum), and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
June 18, 2012

TRACHTENBERG RODES & FRIEDBERG LLP

By   
David G. Trachtenberg (DGT 6675)  
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*Attorneys for Defendant Michael Novello*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**JAMES ZIMMERMAN, PHILIP CULHANE,  
DAVID HILTBRAND, WILLIAM JACKSON,  
GEORGE ZAROU, JOHN JOSEPH  
PAGGIOLI, "JOHN DOE II," "JOHN DOE  
III," PHILIP C. HENNINGSEN, PHILIP  
LYLE SMITH, "JOHN DOE V," and DAVID  
ZARNOCK,**

**Plaintiffs,**

**-against-**

**POLY PREP COUNTRY DAY SCHOOL,  
WILLIAM M. WILLIAMS, DAVID B.  
HARMAN, AND VARIOUS MEMBERS OF  
THE POLY PREP BOARD OF TRUSTEES,  
WHOSE NAMES ARE CURRENTLY  
UNKNOWN AND THUS DESIGNATED AS  
"JAMES DOE I-XXX," HARRY  
PETCHESKY, ESQ., ROBERT F.  
HERRMANN, ESQ., and MICHAEL  
NOVELLO,**

**Defendants.**

**No. 09 Civ. 4586 (FB) (CLP)**

**Electronically Filed**

**DECLARATION OF DAVID G. TRACHTENBERG, ESQ.**

David G. Trachtenberg, Esq. declares pursuant to 28 U.S.C. § 1746:

1. I am a member of the bar of this Court and a partner with the firm of Trachtenberg Rodes & Friedberg LLP, which represents defendant Michael Novello ("Novello") in the above-captioned action. I respectfully submit this declaration in support of Novello's motion to dismiss the claims asserted against him in Plaintiffs' Third Amended Complaint (with Addendum) dated March 21, 2012 (the "Third Amended Complaint"). I am fully familiar with the matter set forth below.

2. Novello was a newly added defendant in the Plaintiffs' Third Amended Complaint.

3. Pursuant to an extension request consented to by Plaintiffs' counsel and So Ordered by Magistrate Judge Cheryl L. Pollak, Novello's time to answer or move with respect to the Third Amended Complaint was extended from May 3, 2012 until July 3, 2012. A copy of the So Ordered extension letter is attached hereto as Exhibit A.

4. Plaintiffs' Third Amended Complaint contains 645 paragraphs. Novello is only mentioned in paragraphs 29, 86, 88, 89, 214 to 217, 351, 356, 357, 358, 428, 586, 628, and 636 and in the headings of Counts I, II, IV and VI.

5. In sum, the factual allegations against Novello are as follows: a) upon information and belief, Novello was a high-ranking administrator at Poly Prep Country Day School ("Poly Prep") from 1970 to 1991; *see* Third Amended Complaint, ¶ 29; b) upon information and belief, defendant William M. Williams told Novello about the allegation of John Marino and his father, regarding Philip Foglietta sexually abusing boys near the Poly Prep grounds; *see* Third Amended Complaint, ¶ 86; and c) in or about 1976, a Poly Prep student informed Novello that Philip Foglietta was sexually abusing him; *see* Third Amended Complaint, ¶ 215.

6. Oral argument regarding the other defendants' motions to dismiss Plaintiffs' Third Amended Complaint has recently been scheduled to take place on June 20, 2012.

7. Novello seeks dismissal of all claims asserted against him for the reasons set forth in the Memorandum of Law in Support of the Poly Prep Defendants' Motion to Dismiss Plaintiffs' Revised Second Amended Complaint dated December 22, 2011, the Reply Memorandum of Law in Further Support of the Poly Prep Defendants' Motion to Dismiss

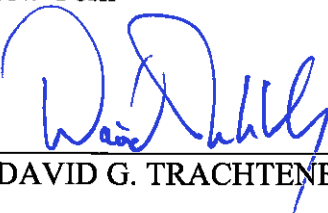
Plaintiffs' Revised Second Amended Complaint dated December 22, 2011, the Supplemental Memorandum of Law in Support of the Poly Prep Defendants' Motion to Dismiss Plaintiffs' Third Amended Complaint dated April 16, 2012 (with Addendum), and the Supplemental Reply Memorandum of Law in Support of the Poly Prep Defendants' Motion to Dismiss Plaintiffs' Third Amended Complaint (with Addendum) dated May 21, 2012.

8. Since no new legal or factual arguments are raised by Novello's motion, it is respectfully submitted that there is no need for Plaintiffs to respond to Novello's motion to dismiss.

9. On June 15, 2012, I spoke to Plaintiffs' counsel, Kevin T. Mulhearn, Esq., regarding Novello's motion to dismiss. Mr. Mulhearn agreed that this motion could be made on short notice in order to place it before the Court at the same time as the other defendants' motions to dismiss. Mr. Mulhearn also agreed that there is no need for Plaintiffs to respond to Novello's motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June \_\_\_, 2012, in New York, New York

  
\_\_\_\_\_  
DAVID G. TRACHTENBERG

# EXHIBIT A

**Full docket text for document 247:**

ENDORSED LETTER ORDER granting [246] Motion for Extension of Time to Answer. Answer due 7/3/12. So Ordered by Magistrate Judge Cheryl L. Pollak on 5/7/2012. (Caggiano, Diana)

PACER Service Center			
Transaction Receipt			
06/15/2012 17:21:22			
<b>PACER Login:</b>	tr0078	<b>Client Code:</b>	538001
<b>Description:</b>	History/Documents	<b>Search Criteria:</b>	1:09-cv-04586-FB-CLP
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.10

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April 27, 2012

**BY ECF AND U.S. MAIL**

The Honorable Frederic Block  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**Re: Zimmerman, et al. v. Poly Prep Country Day School, et al.,**  
**09 Civ. 4586 (FB) (CLP)**

Dear Judge Block,

This firm represents newly-added defendant Michael Novello in the above-captioned matter. Dr. Novello has been added as a defendant in the recently-filed Third Amended Complaint.

I write with the consent of Plaintiffs' counsel to request the Court's approval of an extension of Dr. Novello's time to answer or move with respect to the Third Amended Complaint from May 3, 2012 until July 3, 2012. This is Dr. Novello's first request for an extension.

If the foregoing is acceptable to Your Honor, kindly endorse this letter or otherwise grant this application.

Thank you for your consideration.

*Request granted  
So Ordered*

*USMS*

*5/7/12*

DGT/ac

Respectfully submitted,

*David G. Trachtenberg*  
David G. Trachtenberg